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No. 656

In the Supreme Court of the United States

OCTOBER TERM, 1935

UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

J. M. CORRICK AND L. J. KELEHER, A PARTNERSHIP DOING BUSINESS AS ADAMS, CORRICK & KELEHER ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLANTS

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OPINION BELOW

The opinion of the specially constituted District Court (R. 23–24) is not reported.

JURISDICTION

The order for interlocutory injunction was entered by the District Court on December 3, 1935 (R. 28–30). Petition for appeal was filed December 18, 1935, and was allowed the same day (R. 32–33).

Section 316 of the Packers and Stockyards Act, c. 64, 42 Stat. 159, 168, provides that:

> * * * the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title.

Judicial review of the orders of the Interstate Commerce Commission was originally provided for by Section 1 of the Act of June 18, 1910, c. 309, 36 Stat. 539, commonly known as the Commerce Court Act, which conferred jurisdiction upon the Commerce Court over "Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." The Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219 (U. S. C., Tit. 28, Secs. 41 (28), 47), transferred the jurisdiction of the Commerce Court to the several District Courts of the United States, and provided that all suits for interlocutory injunctions should be heard by three judges. Provision was made by the said Urgent Deficiencies Act for direct appeal to this Court from an order granting or denying an interlocutory injunction. (U. S. C., Tit. 28, Secs. 47, 345 (4).)

QUESTIONS PRESENTED

The general question presented is whether the specially constituted three-judge District Court erred as a matter of law in granting the order for an interlocutory injunction from which this appeal is taken. The specific questions presented are as follows:

(1) Whether the specially constituted three-judge District Court had jurisdiction to enter the order for an interlocutory injunction.

(2) Whether appellees can lawfully file and publish a schedule of rates higher than the maximum rates prescribed by the Secretary of Agriculture in orders which have been held by the District Court to be lawful, and whether such rates can lawfully be collected notwithstanding that they exceed the maximum rates prescribed in the orders.

(3) Whether the schedule of rates published by appellees on October 19, 1935, to become effective November 1, 1935, ever became the lawful and effective schedule, inasmuch as it was tendered to the Secretary of Agriculture, and was rejected and never actually filed by him.

STATUTES INVOLVED

The pertinent provisions of the Packers and Stockyards Act, 1921, and of the statutes relating to judicial review of the orders of the Secretary of Agriculture are set forth in the Appendix, *infra*, pages 43–52.

STATEMENT

Appellees in this case are market agencies engaged in the buying and selling of live stock on

a commission basis at the Union Stock Yards in Chicago, Illinois. With a few exceptions, they are the same persons who are appellants in *C. H. Acker et al.* v. *United States et al.*, No. 655 (R. 5, 6).

On October 31, 1935, appellees filed a petition in the District Court for the Northern District of Illinois, Eastern Division, the material allegations of which may be summarized as follows:

Appellees are market agencies registered with the Secretary of Agriculture under the Packers and Stockyards Act, 1921, and engaged in the buying and selling of livestock on a commission basis at the Union Stock Yards, Chicago, Illinois (R. 3–4). On January 8, 1934, the Secretary of Agriculture issued an order prescribing maximum reasonable rates to be charged by appellees for their services, and on March 12, 1934, a supplemental order slightly modifying the schedule of rates thus prescribed was issued (R. 5). Prior to the effective date of the orders some of appellees herein and others filed a petition and complaint entitled *C. H. Acker et al.* v. *United States et al.*, in the District Court of the United States for the Northern District of Illinois, Eastern Division, seeking to enjoin the enforcement of the orders (R. 5). On April 19, 1934, an interlocutory injunction was issued in the *Acker* case upon the condition that the plaintiffs therein impound each month with the court the difference between the rates collected under the schedule then in effect and the amount

which would have been collected under the maximum rates prescribed in the orders (R. 5). Upon final hearing a decree was entered on March 19, 1935, dismissing the complaint and providing that if an appeal should be taken to this Court within thirty days, the interlocutory injunction theretofore entered should continue in effect until final disposition (R. 5–6). Such an appeal was prayed and allowed and a supersedeas was granted continuing the interlocutory injunction in force upon the same conditions with respect to impounding (R. 6).

On October 19, 1935, appellees published and submitted to the Secretary for filing a schedule of rates to become effective on November 1, 1935, superseding all previous schedules (R. 9). The Secretary refused to file the schedule thus submitted and returned it to appellees, upon the grounds that: (1) once he had prescribed a schedule of rates and charges for a particular market, no change in those rates and charges could be made except by him or by a court of competent jurisdiction in a proper proceeding; and (2) there was litigation pending involving the validity of the orders made by him (R. 9–11).

Appellees allege that it was the duty of the Secretary under the Packers and Stockyards Act, if he believed the rates specified in the schedule thus submitted to be unreasonable, to suspend the schedule and hold a hearing to determine that fact;

and that his refusal to retain and file the schedule was an arbitrary and unreasonable failure to perform his duty, and thus was a nugatory act (R. 11).

Appellees then allege that the schedule thus submitted became effective by operation of law on November 1, 1935, and that they are compelled under the provisions of the Packers and Stockyards Act to put it into effect, and if they fail to do so they are subject to penalties or forfeitures and severe fine or imprisonment (R. 11). On the other hand, they allege that the Secretary threatens to prosecute them for failure to obey his orders (R. 11–12). Thus they allege that they are in the dilemma of being required by the Act to put the schedule published by them into operation under the pain of fines, imprisonment, and forfeitures for failure to do so, but that they are being threatened by the Secretary with other fines and penalties if they put that schedule into effect (R. 12).

Appellees prayed that a three-judge court be convened (R. 12), and then further prayed (R. 13):

> That upon the filing of this petition and bill and the convening of a properly constituted Court, that the Court grant an interlocutory injunction restraining and enjoining the defendants, and each of them, from enforcing or threatening to enforce the Orders of the Secretary of Agriculture in Bureau of Animal Industry Docket 402; and from interfering in any manner, civil or criminal, with the collection of rates and

> charges specified in the schedule or tariff attached as Exhibit A to this petition and complaint, and from threatening to interfere with the collection of the rates and charges specified in such schedule, and enjoining and restraining the Secretary of Agriculture from suspending the registration of any of the petitioners and plaintiffs because of his or its collection of the rates and charges in such schedule,—all until the further order of the Court * * *

A statutory three-judge court was convened (R. 23), and a hearing was held on the application for an interlocutory injunction (R. 25). The court rendered a *per curiam* opinion on November 19, 1935 (R. 23–24), and on December 3, 1935, it entered a statement, findings of fact, and conclusions of law (R. 24–28).

In its findings of fact the court adopted substantially the allegations of the petition concerning the entry of the orders by the Secretary, the hearing and ruling by the District Court on the validity of those orders in the case of *Acker* v. *United States*, 12 F. Supp. 776, the publication by appellees on October 19, 1935, of rates "in most instances materially higher than the rates and charges for such services as specified in" the orders of the Secretary (R. 26), the refusal of the Secretary to retain and file those rates, and the dilemma of appellees in being threatened with criminal and civil prosecution whether they

charged the rates prescribed in the Secretary's orders or those specified in the schedule submitted for filing (R. 25–27). It was further found that immediate and irreparable injury to the appellees would in all likelihood ensue unless an interlocutory injunction was ordered (R. 27).

The conclusions of law entered by the District Court may be summarized as follows:

(1) The Court has jurisdiction of the subject matter and of the parties (R. 27).

(2) Under the Packers and Stockyards Act the market agencies are the primary rate makers for their services (R. 27).

(3) The fact that the Secretary had entered an order fixing rates for such market agencies did not deprive them of the right thereafter to file new rates, which thereupon became the lawful rates subject to suspension and supersession by the Secretary as provided in the Packers and Stockyards Act (R. 27).

(4) The schedule submitted by appellees for filing was properly tendered and should have been filed by the Secretary (R. 27).

(5) The refusal of the Secretary to file the schedule submitted was unreasonable, arbitrary, and without authority of law (R. 27).

(6) "The filing in the office of the Secretary of Agriculture of a schedule of such rates lawfully tendered to him by the market agencies is a ministerial act; and he cannot, by arbitrarily refusing to

file the tendered schedule, render unlawful and ineffective a schedule of rates which, had it been filed, would have been the lawful schedule of rates and charges, unless thereafter suspended or superseded by the Secretary as provided by law" (R. 27–28).

(7) The fact that at the time of the tender of the schedule to the Secretary for filing there was pending before this Court an appeal from a decree of the same three-judge District Court which had held valid the orders of the Secretary did not deprive appellees of the right to initiate and file new rates, subject to suspension and supersession by the Secretary as provided in the Packers and Stockyards Act (R. 28).

(8) The schedule posted and tendered by appellees to the Secretary for filing became effective November 1, 1935, and from that date constituted the lawful rates of appellees, unless and until suspended or superseded by the Secretary (R. 28).

(9) Appellees in all likelihood will suffer irreparable injury unless an interlocutory injunction is granted (R. 28).

On December 3, 1935, the District Court entered an order for an interloctory injunction restraining appellants "from preventing or attempting to prevent, or from interfering with the plaintiffs and each of them in their several capacities as market agencies, from collecting, demanding, receiving, and retaining, the rates and charges for their market agency stockyards services at the

Union Stock Yards, in Chicago, Illinois, as they are fixed and prescribed by the schedule of rates and charges of plaintiffs which were tendered for filing to the Secretary of Agriculture October 19, 1935, to be effective November 1, 1935, a copy of which schedule is attached to the bill of complaint herein as Exhibit A thereof." It was further ordered that appellants "be restrained, until the further order of the court, from instituting, prosecuting, or aiding in instituting or prosecuting, any proceeding or action against the plaintiffs, or either or any of them, for the imposition or recovery of any penalties, fines, forfeitures, or imprisonment because of any demand for and collection of the rates and charges, or any of them, as in said schedule of rates and charges so effective November 1, 1935, is prescribed. And that the said Henry A. Wallace, Secretary of Agriculture, and any person or persons acting or assuming to act for or under him, be enjoined and restrained, until the further order of the court, from suspending the registration as market agencies of all or any of plaintiffs because of their, his, or its demand for, or collection of, the stockyards market agency rates and charges for services as prescribed and set forth in such schedule of rates and charges so effective November 1, 1935."

It was also ordered that, as a condition for the issuance of the injunction, appellees should file with the court a bond in the sum of $50,000, con-

ditioned that in the event it should ultimately be adjudicated that the schedule of rates and charges tendered to the Secretary on October 19, 1935, was not the lawful schedule of rates and charges, appellees should repay to those shippers from whom they had collected such rates and charges the amount by which those collections exceeded the rates and charges which would have been lawful except for the schedule so tendered (R. 29–30).

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

(1) In concluding that it had jurisdiction of the subject matter of this suit.

(2) In concluding as a matter of law that upon the record the schedule of rates as posted and as tendered for filing on October 19, 1935, to the Secretary of Agriculture became effective on November 1, 1935, and from that date constituted the lawful schedule of rates and charges for the market agency services of appellees, unless and until such schedule should be suspended by the Secretary, and in failing to find that such schedule of rates is null, void, and of no effect.

(3) In failing to find that after the Secretary of Agriculture has exercised his power to prescribe maximum rates and charges applicable to appellees, they have no lawful right to publish, file, or make effective a schedule of rates and charges which does not comply with the order of the Secretary.

(4) In concluding as a matter of law that the schedule of rates and charges which appellees on October 19, 1935, tendered to the Secretary of Agriculture for filing was properly tendered and should have been retained and filed in the office of the Secretary, and in concluding that the rejection by the Secretary of the schedule thus tendered was unreasonable, arbitrary, and without authority of law.

(5) In finding and concluding that immediate and irreparable injury and damage to appellees would in all likelihood ensue unless an interlocutory injunction be granted as prayed.

(6) In failing to find that appellees have an adequate remedy at law.

(7) In granting an interlocutory injunction and in entering the order for an interlocutory injunction.

SUMMARY OF ARGUMENT

I

The statutory three-judge District Court did not have jurisdiction of the subject matter of this case. Such a court has jurisdiction only over cases brought to enjoin, set aside, annul, or suspend an order of the Secretary of Agriculture. The allegations of the petition and complaint show that the purpose of this suit was to obtain an adjudication that the rate schedule tendered by appellees to the Secretary was valid and effective, and not to review, annul, or suspend the earlier orders of the

Secretary. The conclusions of law and the terms of the interlocutory injunction show that the court below regarded the suit as one brought to enjoin appellants from interfering with the collection of the rates specified in the schedule tendered by appellees to the Secretary. The lower court had no jurisdiction of an action brought to obtain relief from the refusal of the Secretary to file the tendered schedule. That refusal was not an *order,* and the court had jurisdiction only of actions to enjoin, set aside, annul, or suspend an *order*. Even if the action of the Secretary were an order, it could be nothing more than a negative order, and it is well settled that a statutory three-judge district court has no jurisdiction to review, annul, or suspend purely negative orders.

II

The schedule of rates tendered by appellees to the Secretary for filing contained rates which in most instances were higher than the maximum rates prescribed by the orders of the Secretary. Pursuant to the provisions of Section 310 of the Act, the orders of the Secretary provided that thereafter appellees should not publish, demand, or collect rates in excess of the maximum rates prescribed by the orders. The schedule tendered for filing, therefore, violated the orders of the Secretary, which have the force and effect of law. The provisions of Section 306 authorizing market agen-

cies to file schedules of rates upon their own motion do not authorize them to file rates which conflict with orders of the Secretary entered pursuant to Section 310. The statute in this regard is clear upon its face and there is no room or necessity for statutory construction. However, even if the language of the statute were ambiguous, the construction proposed by appellees should be rejected because of the absurd results to which it would lead. If appellees' construction were adopted, market agencies could harass and defeat the rate-making power of the Secretary by repeated and successive filings of new rate schedules in violation of orders made by the Secretary and upheld by the courts, thus forcing the Secretary to hold hearings on each of such new schedules. The rate-making power of the Secretary could not be effectively exercised if subject to such limitations.

III

The schedule of rates which appellees tendered to the Secretary on October 19, 1935, was returned by him and was not filed. Because it was not filed, the rates contained in it cannot be the legal and effective rates. Even if the court below were correct in its holding that the refusal of the Secretary to retain and file these rates was arbitrary, the appellees' remedy would be by mandamus.

ARGUMENT

I

THE COURT BELOW DID NOT HAVE JURISDICTION OF THE SUBJECT MATTER OF THIS CASE

This suit was brought in a statutory three-judge district court. The jurisdiction of the court is derived primarily from Section 316 of the Packers and Stockyards Act which provides that:

> * * * the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title.

Judicial review of the orders of the Interstate Commerce Commission was originally provided for by Section 1 of the Commerce Court Act, c. 309, 36 Stat. 539, which conferred jurisdiction upon the Commerce Court over "Cases brought to enjoin, set aside, annul, or suspend in whole or in part *any order* of the Interstate Commerce Commission." [Italics supplied.] The Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, transferred the jurisdiction of the Commerce Court to the several District Courts of the United States, and provided that all such cases should be heard by three judges.

It is clear from these statutory provisions that a three-judge district court has jurisdiction only of

suits brought to enjoin, set aside, annul, or suspend an *order* of the Secretary of Agriculture.[1] The Government contends that this is not such a suit.[2]

The court below appears to have taken jurisdiction on the ground that this is a suit to enjoin, set aside, annul, or suspend in whole or in part the order made by the Secretary on January 8, 1934, and the order supplemental thereto made on March 12, 1934. The suit should not be so regarded. Its purpose was to prevent appellants from interfering with the collection by appellees of the rates and charges which they claim were lawfully established in the schedule or tariff which was tendered to the Secretary for filing and rejected by him, and which appellees claim became effective on November 1, 1935. This affirmatively appears from the

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[1] This Court has held that under these statutes a statutory three-judge district court has no jurisdiction to review the action of the Interstate Commerce Commission where no *order* has been made by the Commission. *United States* v. *Atlantic, B. & C. R. Co.*, 282 U. S. 522; *United States* v. *Illinois Central R. R. Co.*, 244 U. S. 82.

[2] Objection to the jurisdiction of the court was not made below. Neither the statement of jurisdiction filed with this Court nor the assignment of errors expressly raises the question of the lower court's jurisdiction. It appears, however, that the limited jurisdiction of a statutory three-judge district court cannot be enlarged by the consent of the parties. See *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10, 18. Cf. *La Joya Grant* v. *Belen Land Grant*, 242 U. S. 595. This Court may raise the question of the lower court's jurisdiction of the subject matter on its own motion. *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10, 13; and see *Minnesota* v. *Northern Securities Co.*, 194 U. S. 48, 62–63; *Thomas* v. *Board of Trustees*, 195 U. S. 207, 211; *Mitchell* v. *Maurer*, 293 U. S. 237, 244.

allegations of the petition and complaint. Paragraph 4 thereof reads as follows:

> The petitioners and plaintiffs bring this action in equity against the defendants for the purpose of enjoining and restraining the defendants, and each of them, from interfering, civilly by suspension of the registration of the petitioners or by the exaction of penalties or forfeitures, or criminally by prosecution, with the publication, demands for, and collection of rates and charges lawfully established by the plaintiffs and petitioners in a schedule or tariff effective November 1, 1935 (R. 4).

A study of the allegations of the petition and complaint discloses that the purpose of the suit was to obtain an adjudication that the rate schedule tendered by appellees to the Secretary for filing was valid and effective.[3] It is true that the petition and complaint includes a prayer for an in-

[3] It is significant that in the brief submitted by appellees in the court below they clearly took the position that the suit was not brought to enjoin or set aside the earlier orders made by the Secretary. On page 14 of their brief, appellees stated:

> The independence of the instant suit from the suit of *Acker* v. *United States* is manifest. In the Acker suit, the plaintiffs contended that the rates prescribed by the Secretary were void because arbitrary and unreasonable. The instant suit has no relationship to the rates under question in the Acker suit. The question there was whether the rates prescribed were valid as of a specific time. The question in this suit is of the power of the Secretary to refuse himself to make, and to refuse to allow the market agencies to make, a new rate structure.

junction restraining appellants from enforcing or threatening to enforce the prior orders of the Secretary of Agriculture. But this prayer was merely ancillary to the primary relief sought, which was an injunction restraining interference with the collection of the rates and charges specified in the schedule which appellees claim became effective on November 1, 1935. Indeed, the fact that appellees had brought suit in the *Acker* case to review and set aside the earlier orders of the Secretary and that proceeding was still pending indicates that the instant suit was directed not at those orders but at the refusal of the Secretary to file the new schedule of rates tendered by appellees.

It appears from the conclusions of law and the terms of the interlocutory injunction that the court below regarded the suit as one to enjoin appellants from interfering with the collection of the rates specified in the schedule tendered by petitioners to the Secretary of Agriculture on October 19, 1935. The conclusions of law, which are found on pages 27 and 28 of the record, are directed to the issue of whether appellees had the right to initiate and file rates and whether the schedule of rates tendered to the Secretary of Agriculture for filing became effective on November 1, 1935, and from that date constituted the lawful rates and charges. The relevant provisions of the interlocutory injunction entered by the court below follow:

> It is therefore ordered by the court That a writ of injunction issue out of and under

the seal of this court restraining and enjoining, until the further order of this court, the defendants, Henry A. Wallace, Secretary of Agriculture, Homer S. Cummings, Attorney General, and Michael Igoe, United States District Attorney for the Northern District of Illinois, and all the officers, attorneys, solicitors, agents, and representatives of the United States, and all other persons acting or claiming or assuming to act for and under the authority of the defendants, or any of them, from preventing or attempting to prevent, or from interfering with the plaintiffs and each of them in their several capacities as market agencies, from collecting, demanding, receiving, and retaining, the rates and charges for their market agency stockyards services at the Union Stock Yards, in Chicago, Illinois, as they are fixed and prescribed by the schedule of rates and charges of plaintiffs which were tendered for filing to the Secretary of Agriculture October 19, 1935, to be effective November 1, 1935, a copy of which schedule is attached to the bill of complaint herein as Exhibit A thereof. And that each and all of such persons be restrained, until the further order of the court, from instituting, prosecuting, or aiding in instituting or prosecuting, any proceeding or action against the plaintiffs, or either or any of them, for the imposition or recovery of any penalties, fines, forfeitures, or imprisonment because of any demand for and collection of the rates and charges, or any of them, as in

> said schedule of rates and charges so effective November 1, 1935, is prescribed. And that the said Henry A. Wallace, Secretary of Agriculture, and any person or persons acting or assuming to act for or under him, be enjoined and restrained, until the further order of the court, from suspending the registration as market agencies of all or any of plaintiffs because of their, his; or its demand for, or collection of, the stockyards market agency rates and charges for services as prescribed and set forth in such schedule of rates and charges so effective November 1, 1935. (R. 29.)

It is significant that this injunction on its face does not purport to enjoin, set aside, or annul or suspend in whole or in part the prior orders made by the Secretary, but merely restrains appellants from interfering with the collection of the charges set out in the tariff schedule tendered by appellees to the Secretary of Agriculture.

It is equally clear that the lower court had no jurisdiction of an action brought to obtain relief from the refusal of the Secretary of Agriculture to file the tariff schedule tendered to him by appellees. The court has jurisdiction only of actions to enjoin, set aside, annul, or suspend *an order* of the Secretary, and the refusal of the Secretary to file the schedule tendered by appellees was not an order in any sense. This refusal had none of the formal requisites of an order, nor was it the result of any formal administrative procedure. It was merely

an informal refusal made in response to an informal request to take affirmative action desired by appellees.

Even if the action of the Secretary of Agriculture should be regarded as an order, however, it can be nothing more than a negative order which denies affirmative relief. It is well settled by decisions of this Court with respect to orders made by the Interstate Commerce Commission that a statutory three-judge court has no jurisdiction to review, annul, or suspend purely negative orders which deny affirmative relief. *Procter & Gamble Co.* v. *United States,* 225 U. S. 282; *Hooker* v. *Knapp,* 225 U. S. 302; *Lehigh Valley R. R. Co.* v. *United States,* 243 U. S. 412; *Piedmont & Northern Ry. Co.* v. *United States,* 280 U. S. 469; *Standard Oil Co.* v. *United States,* 283 U. S. 235; *United States ex rel Chicago Great Western R. R. Co.* v. *Interstate Commerce Commission,* 294 U. S. 50, 61–62. The reason for this rule was stated by this Court in *Standard Oil Co.* v. *United States,* 283 U. S. 235, 238, in these words:

> A negative order which denies relief without more * * * contemplates no action susceptible of being stayed by an injunction or affected by a decree setting aside, annulling, or suspending the order.

If it is true, as contended by appellees and as found by the District Court, that the Secretary was under a ministerial duty to file the schedule of rates tendered by appellees, the proper remedy for ap-

pellees to have pursued was a suit at law for a writ of mandamus directing the Secretary to perform that duty. The refusal of the Secretary to perform an alleged ministerial duty does not confer jurisdiction upon a court which has power to review only *orders* made by the Secretary.

II

THE SCHEDULE OF RATES PUBLISHED BY APPELLEES ON OCTOBER 19, 1935, TO BE EFFECTIVE NOVEMBER 1, 1935, IS ILLEGAL AND VOID TO THE EXTENT THAT IT CONTAINS RATES IN EXCESS OF THE MAXIMUM RATES PRESCRIBED BY ORDER OF THE SECRETARY ENTERED JANUARY 8, 1935, AS OF MARCH 12, 1934

The District Court found that the schedule of rates published and tendered for filing by appellees on October 19, 1935, contained rates which were in most instances higher than those provided in the orders of the Secretary (R. 26). Nevertheless, the court concluded that since those rates were not suspended by the Secretary, they became effective on November 1, 1935, the date designated in the schedule as the effective date (R. 28).

The construction which the District Court thus placed upon the provisions of Title III of the Packers and Stockyards Act amounts to this: even though the Secretary of Agriculture has entered an order prescribing maximum rates, and has provided in that order that thereafter appellees shall not publish, demand, or collect any rate or charge in excess of that prescribed in the order, nevertheless appellees at any time thereafter may file a new schedule specifying rates higher than the maximum

rates prescribed by the Secretary, and by so doing may force the Secretary to hold a new hearing on the lawfulness of the schedule of rates filed or else those rates will become effective notwithstanding that they contravene the order. Under this construction, stockyard owners or market agencies may effectively nullify the rate-making power conferred upon the Secretary of Agriculture by successively forcing new hearings through the repeated filing of new rate schedules which violate lawful rate orders.

Although the Act provides for judicial review of orders of the Secretary through application to a three-judge district court for an injunction, thus clearly indicating the intention of Congress that unlawful rate orders should be set aside through the orderly process of judicial review, the construction of the Act adopted by the District Court herein would in effect provide a short cut, not intended by Congress, for those desirous of avoiding the operation of the Secretary's rate orders. Instead of requiring application for judicial review of orders thought to be unlawful, the decision of the District Court permits nullification of such orders by the simple expedient of filing a schedule which violates them. Even though the Secretary could suspend the operation of such a schedule for 60 days for the purpose of holding a new hearing, and even though after such a hearing the Secretary might again reaffirm the rates he had previously

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prescribed, repeated and successive filings of new tariffs violative of such prescribed rates could obviously wear down and defeat the rate-making authority.

The record in the *Acker* case demonstrates the mass of detail involved in the task of determining just and reasonable rates for market agency services in fulfillment of the duty imposed upon the Secretary by Section 310 of the Packers and Stockyards Act. The extensive cost studies made necessary by the great number of market agencies doing business at a large stockyard, such as the one at Chicago, and the voluminous evidence with respect to the general business conditions at such a stockyard, require careful analysis and study by the rate-making authority. Although the proper analysis of this evidence frequently consumes considerable time, it is nevertheless a task which must be thoroughly done. Under the construction of the Act adopted by the District Court, notwithstanding the care which may have been exercised in the preparation of an order, market agencies subject to it may, immediately after its entry or coincident with its effective date, file new rates which violate the order and thereby force the Secretary into a new hearing. This may be done without making any attempt at all to challenge the order upon its merits through judicial review.

Not only does the construction adopted by the District Court permit nullification of orders con-

cerning whose reasonableness there may be justifiable doubt, but even orders which have been judicially upheld are rendered vulnerable. Orders which have been judicially approved in proceedings duly brought to enjoin enforcement may, according to the decision below, be nullified by the market agencies through filing a schedule containing rates which violate the orders.

In the instant controversy, the District Court had held the orders of the Secretary valid in the *Acker* case, and had dismissed the petition which had been filed in that case by most of appellees in the present case. The orders upheld in the *Acker* case contained provisions that on or after the effective date the market agencies subject thereto were forbidden to "publish, demand, or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge hereinbefore determined to be just, reasonable, and non-discriminatory for the furnishing of such service." Notwithstanding the adjudication of the District Court that the Secretary's orders challenged in the *Acker* case were valid, appellees on October 19, 1935, approximately seven months after that adjudication and while an appeal was pending, published a schedule containing rates which exceeded the maximum rates prescribed in those orders. According to the decision of the District Court in the instant case, those rates became effective on November 1, 1935, because they were not

suspended by the Secretary. That decision was based solely upon the ground that the language of the Act conferred upon appellees the right thus to nullify and defeat the power of the Secretary to determine fair and reasonable rates, and was made without any showing or finding that there had been any change in economic conditions rendering the prescribed maximum rates unreasonable.

As will hereafter be shown, the words of the Act furnish no basis whatsoever for such a construction. But even if the meaning of the words were ambiguous, the Court should attempt to avoid, if possible, a construction which results in such absurd consequences as those which follow from the decision of the District Court. It is well settled that whenever possible statutes will be construed to avoid absurd and impracticable consequences. See *Church of the Holy Trinity* v. *United States,* 143 U. S. 457, 458–459; *United States* v. *Kirby,* 7 Wall. 482, 486–487; *United States* v. *Katz,* 271 U. S. 354, 357; *Sorrells* v. *United States,* 287 U. S. 435, 446.

But resort to this canon of construction is unnecessary. The language of the Act is clear and unequivocal, and on its face demands rejection of the construction adopted by the District Court.

In the court below appellees relied upon Section 306 (c) of the Act which provides: "No changes shall be made in the rates or charges *so filed and published,* except after ten days' notice to the Secretary and to the public filed and published as

aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect * * *." [Italics supplied.] The words *so filed and published* must refer to rates filed pursuant to authority granted by some preceding provision of Section 306. They cannot refer to rates fixed by the Secretary in the exercise of the rate-making power conferred upon him by the Act, because the grant of such power to the Secretary is made in the subsequent provisions of Section 310.

The only provision preceding Section 306 (c) which in any way concerns the fixing of rates is that contained in Section 306 (a), wherein it is provided that within sixty days after the Secretary has given notice that a stockyard comes within the terms of the Act, every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all the rates and charges for the services furnished by such agency. Subsections (a) and (c) of Section 306 relate primarily to the procedure for filing rates by market agencies themselves in the absence of action by the Secretary. Section 306 (a), by requiring the filing of rates by market agencies within sixty days after notice has been given that a stockyard comes within the terms of the Act, provides a means for the orderly posting of tariffs and the filing of rates by market agencies themselves, so that business may be con-

ducted in an orderly fashion irrespective of whether the Secretary ever exercises his rate-making powers. The changes in rates which Section 306 (c) authorizes the market agencies to make themselves relate to changes in rates and charges filed and published as provided in Section 306 (a). Section 306 does not purport to provide a means for setting aside or superseding orders of the Secretary.

The provisions of other Sections of the Act lend further support to this reading of the language of Section 306 (c). Thus, Section 310 (a), which empowers the Secretary to prescribe rates, provides that he "May determine and prescribe what will be the just and reasonable rate or charge * * * *to be thereafter observed* * * *." [Italics supplied.] Section 310 (b) provides that the Secretary shall have the power to make an order that an operator[4] in a stockyard "*shall not thereafter publish, demand, or collect* any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum * * * so prescribed * * *." [Italics supplied.] It should be noted in this connection that in the orders made by the Secretary on January 8, 1934, and March 12, 1934, it was expressly provided, as this Section author-

[4] The word "operator" as used in this Section has been held by this Court to include market agencies. *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420.

izes, that appellees should not publish, demand, or collect any rates or charges in excess of those prescribed therein. In addition, Section 313 of the Act provides that, except as otherwise provided in the Act, all orders of the Secretary, other than orders for the payment of money, shall take effect at the time stated in the order, "and *shall continue in force until his further order*, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction."[5] [Italics supplied.]

Thus the Act provides that once the Secretary prescribes a maximum reasonable rate it is "to be thereafter observed," "it shall continue in force until his further order," and the market agency "shall not thereafter publish, demand, or collect any rate * * * in excess of the maxi-

[5] It is clear that the interlocutory injunction entered by the District Court pending the appeal in the *Acker* case did not suspend the prior orders of the Secretary within the meaning of Section 313. On the contrary, those orders were upheld by the District Court. The interlocutory injunction was granted by consent and upon condition that appellees impound with the Clerk of the Court the difference between the charges collected under the former schedule of rates and the amount which would have been collected under the rates prescribed in the orders of the Secretary. Thus, if the decision of the District Court is affirmed on appeal, there will never have been a moment of time subsequent to the effective date named in the orders during which the orders of the Secretary will not have been effective.

mum so prescribed." These express provisions of the Act plainly deny to appellees the right to tender for filing a schedule specifying rates higher than the maximum rates prescribed in orders theretofore made by the Secretary, and whose validity is under attack in proceedings which are still pending. In these circumstances the Secretary acted properly in rejecting and refusing to file the schedule of rates tendered by appellees.

A consideration of the nature of the function of the Secretary in prescribing maximum reasonable rates will lend further support to this contention. It is clear that in prescribing rates he is acting in a legislative, or quasi-legislative capacity. See *Prentis* v. *Atlantic Coast Line,* 211 U. S. 210, 226; *Baer Bros.* v. *Denver & Rio Grande R. R. Co.,* 233 U. S. 479, 486; *Terminal Railroad Assn.* v. *United States,* 266 U. S. 17, 30; *Arizona Grocery Co.* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 284 U. S. 370, 386, 388. An order of the Secretary may be challenged in appropriate legal proceedings at any time, but it would seem clear that no person should be able to render nugatory the legislative action of the Secretary, or force him to legislate again, without any determination as to the validity of his first legislative action, any more than could be done in the case of an act of Congress.

Appellants do not contend that once the Secretary has made an order prescribing maximum rea-

sonable rates, appellees are precluded forever afterward from making any attack upon those rates. Appellants urge only that appellees cannot overthrow the orders of the Secretary by the method they have pursued here. Ample opportunity for review and modification of the Secretary's orders is provided by the Act. Under Section 316 market agencies are given the right to obtain review of the Secretary's orders and to have them annulled or set aside if they are invalid. That was the procedure followed by appellees in the *Acker* case.

Moreover, if subsequent to the effective date of an order of the Secretary, and even after the validity of such an order has been judicially upheld, conditions should so change that the rates prescribed are no longer reasonable, there are appropriate remedies available both administratively and in the courts. It is not to be doubted that in case of substantial change in economic conditions subsequent to the effective date of an order, the road is open to a rehearing before the Secretary at the motion of the market agencies. The Secretary retains jurisdiction over his orders and has power to change them at any time in the future.

The power of the Secretary to make such changes in his orders is expressly recognized in Section 313 of the Act. There it is stated that, except as otherwise provided in the Act, all orders of the Secretary, other than those for the payment of money, shall take effect at the time stated in the order,

"and *shall continue in force until his further order,* or for a specified period of time, according as is prescribed in the order, *unless such order is suspended or modified or set aside by the Secretary* or is suspended or set aside by a court of competent jurisdiction." [Italics supplied.] Thus the Secretary is expressly granted the power to suspend, modify, or set aside his own orders, and can change a prior order by a subsequent one. It appears, therefore, that this Section recognizes the right of market agencies to obtain a rehearing before the Secretary in a proper case. And it is clear that if the Secretary improperly denies a petition for rehearing, resort may be had to the courts. See *Atchison, Topeka & Santa Fe Ry. Co.,* v. *United States,* 284 U. S. 248; *United States* v. *Northern Pacific Ry. Co.,* 288 U. S. 490.

Furthermore, this Court has expressly recognized the fact that the Secretary has the power to grant a rehearing. In the case of *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, it was said (at pp. 444–445):

> Where it is believed that the Secretary erred in his findings because important evidence was not brought to his attention, the appropriate remedy is to apply for a rehearing before him or to institute new proceedings. He has the power and the duty to modify his order, if new evidence warrants the change. Compare *Interstate Commerce Commission* v. *Union Pacific R. R. Co.,*

222 U. S. 541, 550. A rate order is not *res judicata.* Every rate order made may be superseded by another.

It is important to note in this connection that the Secretary has in the past always recognized the right of those affected by his rate orders to seek a rehearing. Where he has been of the opinion that the circumstances warranted it, he has granted such a rehearing. See *Morgan* v. *United States,* 8 F. Supp. 766, 768. In other cases, where he has been of the opinion that there was no showing of changed conditions warranting a new order, he has denied the request for rehearing. See *Union Stock Yards Co. of Omaha* v. *United States,* 9 F. Supp. 864, 866–867; *St. Joseph Stock Yards Co.* v. *United States,* 11 F. Supp. 322, 324; *American Commission Co.* v. *United States,* 11 F. Supp. 965, 966. Never has he denied such a request on the ground that he had no power under the Act to grant it; and if a request were improperly denied on such ground, or upon other grounds, parties affected could then resort to their remedy in court.

It is also to be noted that appellees themselves have recognized the right of the Secretary to grant a rehearing. Thus, in their petition in this case, it is alleged in Paragraph 7 (R. 5) that a petition for rehearing was made by them prior to the entering of the supplemental order of March 12, 1934, and denied by the Secretary. And it is further alleged that on April 9, 1934, an amended petition for re-

hearing was filed and that it was denied on April 12, 1934, before the institution of the suit in the *Acker* case. However, no such petition for rehearing was ever made thereafter. It would appear then that appellees were aware of their remedy through a rehearing, but that they attempted to circumvent that procedure by the means adopted herein.

It is submitted, therefore, that a complete remedy was available to appellees upon a showing that because of changed conditions the rates prescribed by the Secretary were no longer the reasonable and lawful rates. Such a showing was absolutely necessary before they had any right to obtain relief from the Secretary's orders. See *United States* v. *Northern Pacific Ry. Co.*, 288 U. S. 490. Appellees have attempted to evade that requirement by adopting the procedure in question herein. By such means they attempt to procure a ruling that despite the fact that the orders of the Secretary prescribing lawful rates have been upheld by the District Court, and without regard to the decision which this Court may reach concerning the validity of those orders, the rates submitted by appellees for filing are now the legal rates, even though there has been no showing, or finding, that those rates are reasonable and lawful. Such a procedure is in defiance of the express provisions of the Act, is disruptive of sound administrative practice, and leads to absurd results—results which reduce the rate-making power of the Secretary to a nullity.

III

THE SCHEDULE OF RATES PUBLISHED BY APPELLEES OCTOBER 19, 1935, WAS NEVER LEGAL AND EFFECTIVE, SINCE AS A MATTER OF LAW IT WAS NEVER FILED

Appellees allege that they "duly prepared, published, and submitted to the Secretary for filing" a new schedule of rates suspending all previous rates (par. 13 of pet.; R. 9), but that he "refused to retain the proposed new schedule of rates and charges" (par. 14 of pet.; R. 9). Appellees further allege that the Secretary's refusal to retain and file the schedule was arbitrary and unreasonable and therefore void and of no effect (par. 15 of pet.; R. 11), and that the schedule of rates thus submitted for filing became the legal and effective rates by operation of law (par. 17 of pet.; R. 11).

It has already been demonstrated that the Secretary properly rejected the schedule submitted by petitioners. *Supra,* pp. 22–34. Appellants further contend that aside from the question of whether the Secretary acted properly in rejecting and refusing to file the rates, those rates cannot under the statute become effective since they were never actually *filed* by the Secretary.

The Act expressly provides that new schedules of rates must be *filed* before they can become effective. Section 306 (c) provides that "No changes shall be made in the rates or charges so filed and published, except after ten days' notice to the Sec-

retary and to the public *filed* and published as aforesaid * * *." [Italics supplied.] Section 306 (e) provides that "Whenever there is *filed* with the Secretary any schedule, stating a new rate or charge" [italics supplied] the Secretary may enter upon a hearing concerning the lawfulness of the rate or charge. Section 306 (f) provides that no market agency shall "charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules *filed* and in effect at the time * * *." [Italics supplied.] It is submitted that the rates which appellees contend in this proceeding are the legal rates were *submitted for filing,* but were never actually *filed* so as to come within the requirements of the above Sections of the Act.

There is a vast difference between *submitting for filing* and actually *filing.* The *submitting or tendering for filing* is an act of the market agency. The actual *filing* is an act of the Secretary—the actual retention of and placing on file the rates submitted to him. Appellees recognized this distinction in the allegations of their petition referred to above. The District Court clearly recognized the distinction throughout its opinion, findings of fact, and conclusions of law (R. 23–28), wherein it continually referred to appellees' act as that of *submitting the rates for filing,* and to the Secretary's act as a *refusal to file.* Nevertheless, appellees contended, and the District Court concluded,

that those rates became the legal rates despite the fact that they were never actually *filed.*

The Act itself also clearly recognizes a distinction between *submitting for filing* and *filing.* Thus, Section 306 (d) provides that: "The Secretary *may reject and refuse to file* any schedule *tendered for filing* which does not provide and give notice of its effective date, and any schedule so rejected by the Secretary shall be void and its use shall be unlawful." [Italics supplied.] If the tendering for filing could be considered tantamount to actual filing, this Section could never operate effectively.

A consideration of the purpose of the requirement that rates be filed before they can become effective will demonstrate conclusively that the word "filed", as used in the Packers and Stockyards Act, means an actual retention and placing on file of the schedule by the Secretary. That purpose is twofold: first, so that the public may have a means of determining what the legal rates at any particular time are; and, second, so that the public and the administrative officials charged with the duty of enforcing the Act may know whether a particular market agency is abiding by the legal rates. If market agencies were to be permitted to make changes in their rates without the necessity of such changes being actually kept on file with the Secretary, the entire purpose of the Act would be defeated. The public would never know whether or not the market agencies were overcharging for their

services, and the administrative officials would be unable to enforce compliance with the Act, since they would never know whether the legal rates were being charged or not. At the very heart of the Act is the requirement that rates to be effective must actually be *on file* with the Secretary.

The decided cases clearly support the view that there is a distinction between a *tendering for filing* and the actual *filing,* and that the latter term connotes an actual retention and keeping on file by the public officials. Thus, this Court in *United States* v. *Lombardo,* 241 U. S. 73, 76, quoted with approval the language of the lower court, whose judgment it affirmed, as follows (at p. 76):

> The word "file" is derived from the Latin word *"filum,"* and relates to the ancient practice of placing papers on a thread or wire for safe keeping and ready reference. Filing, it must be observed, is not complete until the document is delivered and received. "Shall file" means to deliver to the office and not send through the United States mails. *Gates* v. *State,* 128 N. Y. Court of Appeals, 221. *A paper is filed when it is delivered to the proper official and by him received and filed.* [Italics supplied.]

And in the case of *United States* v. *Van Duzee,* 185 U. S. 278, this Court recognized a distinction between the word "deposit" and the word "filing." See also *United States* v. *Davidson,* 285 Fed. 661 (E. D. Pa.).

Various pronouncements on the question of what constitutes a filing have been made in the lower Federal courts. In *Edward Sales Co.* v. *Harris Structural Steel Co.*, 17 F. (2d) 155, 158–159 (D. Maine) it was said:

> It would seem that some action on the part of the receiving official is necessary, or at least an intention on his part to treat the paper as similar papers are treated in the regular routine of his office.
>
> Here both elements are lacking. The regular course of filing was interrupted. The progress of the paper was stopped at the door of the secretary's office; nor did he have any intention of filing it when received, as he had been warned by the maker not to do so. He has refused to file it. He has consistently tried to leave the rights of the parties where they were before the mail arrived that morning. On the advice of the Attorney General he has refused, quite properly, to give the paper to either party till this litigation ceases.
>
> Under the circumstances, I cannot hold that the rights of the parties were other than they would have been, had the power of attorney not been mailed to Augusta by Mr. Merrill.

In *Lewis-Hall Iron Works* v. *Blair*, 23 F. (2d) 972, 974 (Ct. of App. of D. of C.) it was stated:

> "In the sense of a statute requiring the filing of a paper or document, it is filed when delivered to and received by the proper officer

> to be kept on file. The word carries with it the idea of permanent preservation of the thing so delivered and received; that it may become a part of the public record. It is not synonymous with deposited; People v. Peck, 67 Hun. 560, 22 N. Y. S. 576." 2 Bouv. Law Dict. 1219, "File."

In *In Re Gubelman,* 10 F. (2d) 926, 929 (C. C. A. 2d), it was said:

> The word "filed" has not been defined by Congress. It has, however, a well-defined meaning. It signifies the delivery into the actual custody of the proper officer, designated by the statute, and whose duty it is to keep the records of the court. It carries with it the idea of permanent preservation of the thing as a public record. A paper is not filed by presenting it to the judge. He has no office in which papers are filed and permanently preserved. A paper in a case is not filed until it is deposited with the clerk of the court, for the purpose of making it a part of the records of the case.

~~See also *Pacific Telephone & Telegraph Co.* v. *Agnew*, 2 F. (2d) 155 (W. D. Wash.); *Mutual Life Ins. Co. v. Phinney*, 76 Fed. 617 (C. C. A. 9th).~~

It appears to be the general rule in the State courts that a mere tendering of a paper to a public official followed by a withdrawal of the paper does not satisfy a statutory requirement that the paper be filed. *Chapin* v. *Kingsbury,* 135 Mass. 580; *The*

State v. *Chicago and Eastern Illinois R. R. Co.*, 145 Ind. 229; *Nations* v. *Lowenstern*, 27 N. M. 613.

See also *Albany Builders' Supply Co.* v. *Eastern Bridge and Structural Co.*, 235 N. Y. 432, 437; *Meridian National Bank* v. *Hoyt & Bros. Co.*, 74 Miss. 221, 228; *Bergeron* v. *Hobbs*, 96 Wis. 641, 643; *Medland* v. *Linton*, 60 Neb. 249, 255–256.

Appellants submit that the Secretary properly rejected and refused to file the schedule of rates submitted to him by appellees. However, if as contended by appellees, and as found by the District Court, the Secretary acted improperly in rejecting that schedule, it is submitted that the remedy sought by appellees herein was not the proper one. If, as concluded by the District Court, the act of filing by the Secretary is a ministerial act, it would seem that the proper remedy for appellees would have been a suit at law to procure a writ of mandamus directing the Secretary to file the rates submitted. In such a suit the question of whether it was his duty to file those rates, even though they were higher than the ones prescribed in his orders, could have been determined. It is submitted, however, that appellees had no right to seek a declaration from a three-judge district court to the effect that the rates submitted became effective by operation of law even though they were never actually filed, and to ask that an injunction be issued enjoining interference with the collection of those rates. And it is further submitted that

the District Court erred in concluding that the rates submitted became effective on November 1, 1935, despite the fact that they were never actually filed, and in issuing an injunction as prayed.

CONCLUSION

It is respectfully submitted that the decree of the District Court should be reversed and set aside with directions to dismiss the petition and complaint filed herein.

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MARCH 1936.

APPENDIX

Title III of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 163–168, as amended May 5, 1926, c. 240, 44 Stat. 397 (U. S. C. Tit. 7, Secs. 201, *et seq.*), provides, in part, as follows:

SEC. 301. When used in this Act—

(a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;

(b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock;

(c) The term "market agency" means any person engaged in a business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyard services; and

(d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.

SEC. 302. (a) When used in this title the term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their

appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce. This title shall not apply to a stockyard of which the area normally available for handling livestock, exclusive of runs, alleys, or passageways, is less than twenty thousand square feet.

(b) The Secretary shall from time to time ascertain, after such inquiry as he deems necessary, the stockyards which come within the foregoing definition, and shall give notice thereof to the stockyard owners concerned, and give public notice thereof by posting copies of such notice in the stockyard, and in such other manner as he may determine. After the giving of such notice to the stockyard owner and to the public, the stockyard shall remain subject to the provisions of this title until like notice is given by the Secretary that such stockyard no longer comes within the foregoing definition.

SEC. 303. After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless he has registered with the Secretary under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged, and the kinds of stockyard services, if any, which he furnishes at such stockyard. Whoever violates the provisions of this section shall be liable to a penalty of not more than $500 for each such offense and not more than $25 for each day it continues, which shall accrue to the United States and may be recovered

in a civil action brought by the United States.

SEC. 304. It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard: *Provided,* That in any State where the weighing of livestock at a stockyard is conducted by a duly authorized department or agency of the State, the Secretary, upon application of such department or agency, may register it as a market agency for the weighing of livestock received in such stockyard, and upon such registration such department or agency and the members thereof shall be amenable to all the requirements of this Act; and upon failure of such department or agency or the members thereof to comply with the orders of the Secretary under this Act he is authorized to revoke the registration of such department or agency and to enforce such revocation as provided in section 315 of this Act.

SEC. 305. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful.

SEC. 306. (a) Within sixty days after the Secretary has given public notice that a stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the

stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such sixty days such schedules must be filed before any stockyard services are furnished.

(b) Such schedules shall plainly state all such rates and charges in such detail as the Secretary may require, and shall also state any rules or regulations which in any manner change, affect, or determine any part or the aggregate of such rates or charges, or the value of the stockyard services furnished. The Secretary may determine and prescribe the form and manner in which such schedules shall be prepared, arranged, and posted, and may from time to time make such changes in respect thereto as may be found expedient.

(c) No changes shall be made in the rates or charges so filed and published, except after ten days' notice to the Secretary and to the public filed and published as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect; but the Secretary may, for good cause shown, allow changes on less than ten days' notice, or modify the requirements of this section in respect to publishing, posting, and filing of schedules, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

(d) The Secretary may reject and refuse to file any schedule tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Secretary shall be void and its use shall be unlawful.

(e) Whenever there is filed with the Secretary any schedule, stating a new rate or charge, or a new regulation or practice affecting any rate or charge, the Secretary may either upon complaint or upon his own initiative without complaint, at once, and if he so orders without answer or other formal pleading by the person filing such schedule, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, charge, regulation, or practice, and pending such hearing and decision thereon the Secretary, upon filing with such schedule and delivering to the person filing it a statement in writing of his reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, regulation, or practice, but not for a longer period than thirty days beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, regulation, or practice goes into effect, the Secretary may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing can not be concluded within the period of suspension the Secretary may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, charge, regulation, or practice shall go into effect at the end of such period.

(f) After the expiration of the sixty days referred to in subdivision (a) no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished

at the stockyard have been filed and published in accordance with this section and the orders of the Secretary made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules filed and in effect at the time; nor refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from bona fide returning to its members, on a patronage basis, its excess earnings on their livestock, subject to such regulations as the Secretary may prescribe); nor extend to any person at such stockyard any stockyard services except such as are specified in such schedules.

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SEC. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed.

* * * * *

SEC. 313. Except as otherwise provided in this Act, all orders of the Secretary under this title, other than orders for the payment of money, shall take effect within such reasonable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction.

SEC. 314. (a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 310, 311, or 312 shall forfeit to the United States the sum of $500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various district attorneys, under the direction of the Attorney General, to prosecute for the re-

covery of forfeitures. The costs and expense of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

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SEC. 316. For the purposes of this title, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title.

The Act of June 18, 1910, c. 309, 36 Stat. 539, popularly known as the Commerce Court Act, provided, in part, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled "An Act to further regulate

commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

* * * * *

SEC. 2. * * * An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the commerce court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree.

The Urgent Deficiencies Appropriation Act of October 22, 1913, c. 32, 38 Stat. 208, 219, provided, in part, as follows:

The Commerce Court, created and established by the Act entitled "An Act to create a Commerce Court and to amend the Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes," approved June eighteenth, nineteen hundred and ten, is abolished from and after December thirty-first, nineteen hundred and thirteen, and the jurisdiction vested in said Commerce Court by said Act is transferred

to and vested in the several district courts of the United States, and all Acts or parts of Acts in so far as they relate to the establishment of the Commerce Court are repealed.

* * * * *

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. * * * An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply.

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